

[Counsel for Defendants Listed on Signature Pages]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST  
LITIGATION

Case No. Type No. 3:17-md-02801-JD

DEFENDANTS' NOTICE OF  
OBJECTION

This Document Relates to:

*Avnet, Inc. v Hitachi Chemical Co., Ltd., et al.*,  
Case No. 3:17-cv-07046-JD

*Benchmark Electronics, Inc. et al. v. AVX Corp.*  
*et al.*, Case No. 3:17-cv-07047-JD

*Jaco Electronics, Inc., et al. v. Nippon Chemi-*  
*Con Co. et al.*, Case No. 3:19-cv-01902-JD

*Arrow Electronics, Inc. v. Elna Co., Ltd., et al.*,  
Case No. 3:18-cv-02657-JD

**DEFENDANTS' NOTICE OF OBJECTION TO PLAINTIFFS' LEXECON WAIVER**

The undersigned Defendants<sup>1</sup> hereby give notice of their objection to Plaintiff Avnet, Benchmark, Jaco, and Arrow's purported waiver of remand to the District of Arizona and District of Colorado for trial proceedings. Plaintiff Avnet filed its action in the District of Arizona on August 22, 2016. Plaintiff Benchmark filed its action in the District of Arizona on June 28, 2017. Plaintiff Jaco, who is represented by the same counsel as Avnet and Benchmark, filed its action in the District of Arizona on March 13, 2019. Plaintiff Arrow filed its action in the District of Colorado on April

<sup>1</sup> "Defendants" are Elna Co., Ltd., Elna America, Inc., Hitachi Chemical Co., Ltd., Hitachi AIC Inc., Hitachi Chemical Co. America, Ltd., Holy Stone Enterprise Co., Ltd., Holy Stone Polytech Co. Ltd., Vishay Polytech Co., Ltd., Milestone Global Technology, Inc. (d/b/a HolyStone International), Nichicon Corporation, Nichicon (America) Corporation, Rubycon Corporation, and Rubycon America Inc. The Hitachi, Nichicon, and Rubycon Defendants join this objection only as to Avnet, Benchmark, and Jaco. Holy Stone and Vishay Defendants join this objection only as to Avnet and Benchmark.

16, 2018. The United States Judicial Panel for Multidistrict Litigation consolidated each action in the Northern District of California for pretrial proceedings only, with corresponding orders that the cases be remanded to Arizona and Colorado for trial.<sup>2</sup> The Plaintiffs' premature purported waiver of remand has been filed while *Daubert* and summary judgment motions are still pending.

Waiver of remand requires the consent of all parties. See *In re Delta Dental Antitrust Litig.*, 509 F.Supp.3d 1377, 1381 (J.P.M.L. 2020) (absent waiver by the parties, trial must occur in the transferor court); *In re Cessna 208 Series Aircraft Prods. Liab. Litig.*, 2009 U.S. Dist. LEXIS 12852, at \*13 (D. Kan. Feb. 19, 2009) ("Absent consent of the parties, Court must remand cases which plaintiffs filed in other district courts."); *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 235 F.R.D. 127, 146 n.72 (D. Me. 2006) (absent parties consent, cases returned to their respective districts for trial), *vacated on other grounds*, 522 F.3d 6 (1st Cir. 2008); *In re Fosamax Prods. Liab. Litig.*, 2011 U.S. Dist. LEXIS 49679 at \*89-93 (S.D.N.Y. April 27, 2011) (trial in transferee court appropriate with consent of both plaintiffs and defendants and noting, "a transferee court lacks authority to conduct a trial of an MDL member case not originally filed in the transferee court without the consent of the parties."); *In re Brand-Name Prescription Drugs Antitrust Litig.*, 264 F. Supp.2d 1372, 1377 n.4 (J.P.M.L. 2003) (parties must consent for MDL transferee court to retain case for trial). For the reasons above, Defendants do not consent to the waiver. For the same reasons, Defendants believe that a status conference regarding "trial proceedings" requested by Plaintiffs is unnecessary.

DATED: September 23, 2021

Respectfully Submitted,

By: *s/ Djordje Petkoski*

**SHEARMAN AND STERLING LLP**  
 Djordje Petkoski (admitted *pro hac vice*)  
 Todd M. Stenerson (admitted *pro hac vice*)  
 401 9th St. NW  
 Washington, DC 20004  
 Telephone: (202) 508-8000  
 Facsimile: (202) 508-8100  
 djordje.petkoski@shearman.com  
 todd.stenerson@shearman.com

<sup>2</sup> See *In re: Capacitors Antitrust Litigation (No. III)*, Case MDL No. 2801, Orders dated December 5, 2017 (ECF 92), May 2, 2018 (ECF 101), and April 5, 2019 (ECF 127)

John Cove (SBN 212213)  
535 Mission Street, 25th Floor  
San Francisco, California 94105  
Telephone: (415) 616-1139  
Facsimile: (415) 616-1199  
john.cove@shearman.com  
*Counsel for Defendants Rubycon  
Corporation and Rubycon America Inc.*

**WILMER CUTLER PICKERING  
HALE AND DORR LLP**

s/ Heather S. Nyong'o

Heather S. Nyong'o (CA SBN 222202)  
1 Front Street, Suite 3500  
San Francisco, California 94111  
Telephone: (628) 235-1000  
Facsimile: (628) 235-1001  
heather.nyongo@wilmerhale.com

Thomas Mueller (admitted *pro hac vice*)  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006  
Telephone: (202) 663-6000  
Facsimile: (202) 663-6363  
thomas.mueller@wilmerhale.com

Chris Johnstone (CA SBN 242152)  
950 Page Mill Road  
Palo Alto, California 94304  
Telephone: (650) 858-6000  
Facsimile: (650) 858-6100  
chris.johnstone@wilmerhale.com

*Counsel for Defendants Elna Co., Ltd. and  
Elna America, Inc.*

**WILSON SONSINI GOODRICH &  
ROSATI**

s/ Jeffrey C. Bank

Jeffrey C. Bank (admitted *pro hac vice*)  
1700 K Street NW, 5<sup>th</sup> Floor  
Washington, DC 20006  
Telephone: (212) 497-7761  
Facsimile: (212) 999-5899  
jbank@wsgr.com

Jonathan M. Jacobson  
Chul Pak (admitted *pro hac vice*)  
1301 Avenue of the Americas, 40th Floor  
New York, New York 10019  
Telephone: (212) 497-7758  
Facsimile: (212) 999-5899  
jjacobson@wsgr.com  
cpak@wsgr.com

Jeff VanHooreweghe (Bar No. 313371)  
One Market Plaza  
Spear Tower, Suite 3300  
San Francisco, California 94105  
Telephone: (415) 947-2046  
Facsimile: (415) 947-2099  
jvanhooreweghe@wsgr.com

*Counsel for Defendants Hitachi Chemical  
Co., Ltd., Hitachi AIC Inc., and Hitachi  
Chemical Co. America, Ltd.*

**JONES DAY**

s/ Eric P. Enson

Eric P. Enson (State Bar No. 204447)  
Jeffrey A. LeVee (State Bar No. 125863)  
Kelly M. Ozurovich (State Bar No. 307563)  
555 South Flower Street, Fiftieth Floor  
Los Angeles, California 90071  
Telephone: (213) 489-3939  
Facsimile: (213) 243-2539  
jlevec@JonesDay.com  
epenson@JonesDay.com  
kozurovich@jonesday.com

*Counsel for Defendants Holy Stone  
Enterprise Co., Ltd., Milestone Global  
Technology, Inc. (d/b/a HolyStone  
International), and Vishay Polytech Co., Ltd.*

**K&L GATES LLP**

s/ Michael E. Martinez

Michael E. Martinez (admitted *pro hac vice*)  
Scott M. Mendel (admitted *pro hac vice*)  
Steven M. Kowal (admitted *pro hac vice*)  
Lauren N. Donahue (admitted *pro hac vice*)  
Brian J. Smith (admitted *pro hac vice*)  
70 West Madison Street, Suite 3300  
Chicago, Illinois 60602  
Telephone: (312) 372-1121  
Facsimile: (312) 827-8000  
michael.martinez@klgates.com  
scott.mendel@klgates.com  
steven.kowal@klgates.com  
lauren.donahue@klgates.com  
brian.j.smith@klgates.com

Daniel W. Fox (SBN 268757)  
4 Embarcadero Center, Suite 1200  
San Francisco, California 94111  
Telephone: (415) 882-8200  
Facsimile: (415) 882-8220  
daniel.fox@klgates.com

Philip Van Der Weele (admitted *pro hac vice*)  
One SW Columbia Street, Suite 1900  
Portland, Oregon 97258  
Telephone: (503) 228-3200  
Facsimile: (503) 553-6227  
phil.vanderweele@klgates.com

*Counsel for Defendants Nichicon  
Corporation and Nichicon (America)  
Corporation*